

CENTER FOR DISABILITY ACCESS  
Amanda Seabock, Esq., SBN 289900  
Prathima Price, Esq., SBN 321378  
Dennis Price, Esq., SBN 279082  
Mail: 8033 Linda Vista Road, Suite 200  
San Diego, CA 92111  
(858) 375-7385; (888) 422-5191 fax  
[amandas@potterhandy.com](mailto:amandas@potterhandy.com)

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Orlando Garcia,**

Plaintiff,

v.

**Oro Sol Corporation,** a California  
Corporation

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Orlando Garcia complains of Oro Sol Corporation, a California Corporation; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff suffers from Cerebral Palsy. He has manual dexterity issues. He cannot walk. He uses a wheelchair for mobility.

2. Defendant Oro Sol Corporation owned Joyeria Del Sol located at or about 233 S. White Rd., San Jose, California, in December 2021.

3. Defendant Oro Sol Corporation owns Joyeria Del Sol ("Store") located at or about 233 S. White Rd., San Jose, California, currently.

1       4. Plaintiff does not know the true names of Defendants, their business  
2 capacities, their ownership connection to the property and business, or their  
3 relative responsibilities in causing the access violations herein complained of,  
4 and alleges a joint venture and common enterprise by all such Defendants.  
5 Plaintiff is informed and believes that each of the Defendants herein is  
6 responsible in some capacity for the events herein alleged, or is a necessary  
7 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
8 the true names, capacities, connections, and responsibilities of the Defendants  
9 are ascertained.

10  
11       **JURISDICTION & VENUE:**

12       5. The Court has subject matter jurisdiction over the action pursuant to 28  
13 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
14 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

15       6. Pursuant to supplemental jurisdiction, an attendant and related cause  
16 of action, arising from the same nucleus of operative facts and arising out of  
17 the same transactions, is also brought under California's Unruh Civil Rights  
18 Act, which act expressly incorporates the Americans with Disabilities Act.

19       7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
20 founded on the fact that the real property which is the subject of this action is  
21 located in this district and that Plaintiff's cause of action arose in this district.

22  
23       **FACTUAL ALLEGATIONS:**

24       8. Plaintiff went to the Store in December 2021 with the intention to avail  
25 himself of its goods or services motivated in part to determine if the  
26 defendants comply with the disability access laws.

27       9. The Store is a facility open to the public, a place of public  
28 accommodation, and a business establishment.

1       10. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
2 to provide wheelchair accessible paths of travel in conformance with the ADA  
3 Standards as it relates to wheelchair users like the plaintiff.

4       11. The Store provides paths of travel to its customers but fails to provide  
5 wheelchair accessible paths of travel in conformance with the ADA Standards.

6       12. A couple of problems that plaintiff encountered was that the paths of  
7 travel inside the Store narrowed to less than 36 inches in width in many places.

8       13. Plaintiff believes that there are other features of the paths of travel that  
9 likely fail to comply with the ADA Standards and seeks to have fully compliant  
10 paths of travel for wheelchair users.

11       14. On information and belief, the defendants currently fail to provide  
12 wheelchair accessible paths of travel.

13       15. The failure to provide accessible facilities created difficulty and  
14 discomfort for the Plaintiff.

15       16. These barriers relate to and impact the plaintiff's disability. Plaintiff  
16 personally encountered these barriers.

17       17. As a wheelchair user, the plaintiff benefits from and is entitled to use  
18 wheelchair accessible facilities. By failing to provide accessible facilities, the  
19 defendants denied the plaintiff full and equal access.

20       18. Even though the plaintiff did not confront the barrier, the sales counter  
21 is too high. There is no counter that is 36 inches or less in height that  
22 wheelchair user could use for his transactions. Plaintiff seeks to have this  
23 barrier removed as it relates to and impacts his disability.

24       19. The defendants have failed to maintain in working and useable  
25 conditions those features required to provide ready access to persons with  
26 disabilities.

27       20. The barriers identified above are easily removed without much  
28 difficulty or expense. They are the types of barriers identified by the

1 Department of Justice as presumably readily achievable to remove and, in fact,  
2 these barriers are readily achievable to remove. Moreover, there are numerous  
3 alternative accommodations that could be made to provide a greater level of  
4 access if complete removal were not achievable.

5 21. Plaintiff will return to the Store to avail himself of its goods or services  
6 and to determine compliance with the disability access laws once it is  
7 represented to him that the Store and its facilities are accessible. Plaintiff is  
8 currently deterred from doing so because of his knowledge of the existing  
9 barriers and his uncertainty about the existence of yet other barriers on the  
10 site. If the barriers are not removed, the plaintiff will face unlawful and  
11 discriminatory barriers again.

12 22. Given the obvious and blatant nature of the barriers and violations  
13 alleged herein, the plaintiff alleges, on information and belief, that there are  
14 other violations and barriers on the site that relate to his disability. Plaintiff will  
15 amend the complaint, to provide proper notice regarding the scope of this  
16 lawsuit, once he conducts a site inspection. However, please be on notice that  
17 the plaintiff seeks to have all barriers related to his disability remedied. See  
18 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
19 encounters one barrier at a site, he can sue to have all barriers that relate to his  
20 disability removed regardless of whether he personally encountered them).

21  
22 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
23 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
24 Defendants.) (42 U.S.C. section 12101, et seq.)

25 23. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
26 again herein, the allegations contained in all prior paragraphs of this  
27 complaint.

28 24. Under the ADA, it is an act of discrimination to fail to ensure that the

1 privileges, advantages, accommodations, facilities, goods and services of any  
2 place of public accommodation is offered on a full and equal basis by anyone  
3 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
4 § 12182(a). Discrimination is defined, inter alia, as follows:

- 5 a. A failure to make reasonable modifications in policies, practices,  
6 or procedures, when such modifications are necessary to afford  
7 goods, services, facilities, privileges, advantages, or  
8 accommodations to individuals with disabilities, unless the  
9 accommodation would work a fundamental alteration of those  
10 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11 b. A failure to remove architectural barriers where such removal is  
12 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
13 defined by reference to the ADA Standards.
- 14 c. A failure to make alterations in such a manner that, to the  
15 maximum extent feasible, the altered portions of the facility are  
16 readily accessible to and usable by individuals with disabilities,  
17 including individuals who use wheelchairs or to ensure that, to the  
18 maximum extent feasible, the path of travel to the altered area and  
19 the bathrooms, telephones, and drinking fountains serving the  
20 altered area, are readily accessible to and usable by individuals  
21 with disabilities. 42 U.S.C. § 12183(a)(2).

22 25. When a business provides paths of travel, it must provide accessible  
23 paths of travel.

24 26. Here, accessible paths of travel have not been provided in conformance  
25 with the ADA Standards.

26 27. When a business provides sales counters, it must provide accessible  
27 sales counters.

28 28. Here, accessible sales counters have not been provided in conformance

1 with the ADA Standards.

2 29. The Safe Harbor provisions of the 2010 Standards are not applicable  
3 here because the conditions challenged in this lawsuit do not comply with the  
4 1991 Standards.

5 30. A public accommodation must maintain in operable working condition  
6 those features of its facilities and equipment that are required to be readily  
7 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

8 31. Here, the failure to ensure that the accessible facilities were available  
9 and ready to be used by the plaintiff is a violation of the law.

10  
11 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
12 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
13 Code § 51-53.)

14 32. Plaintiff repleads and incorporates by reference, as if fully set forth  
15 again herein, the allegations contained in all prior paragraphs of this  
16 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
17 that persons with disabilities are entitled to full and equal accommodations,  
18 advantages, facilities, privileges, or services in all business establishment of  
19 every kind whatsoever within the jurisdiction of the State of California. Cal.  
20 Civ. Code §51(b).

21 33. The Unruh Act provides that a violation of the ADA is a violation of the  
22 Unruh Act. Cal. Civ. Code, § 51(f).

23 34. Defendants’ acts and omissions, as herein alleged, have violated the  
24 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
25 rights to full and equal use of the accommodations, advantages, facilities,  
26 privileges, or services offered.

27 35. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
28 discomfort or embarrassment for the plaintiff, the defendants are also each

1 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
2 (c).)

3  
4 **PRAYER:**

5 Wherefore, Plaintiff prays that this Court award damages and provide  
6 relief as follows:

7 1. For injunctive relief, compelling Defendants to comply with the  
8 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
9 plaintiff is not invoking section 55 of the California Civil Code and is not  
10 seeking injunctive relief under the Disabled Persons Act at all.

11 2. For equitable nominal damages for violation of the ADA. See  
12 Uzuegbunam v. Preczewski, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)  
13 and any other equitable relief the Court sees fit to grant.

14 3. Damages under the Unruh Civil Rights Act, which provides for actual  
15 damages and a statutory minimum of \$4,000 for each offense.

16 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
17 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

18  
19 Dated: January 7, 2022

CENTER FOR DISABILITY ACCESS

20  
21 By: 

22 Amanda Seabock, Esq.  
23 Attorney for plaintiff  
24  
25  
26  
27  
28